5/25/01 - DB O's comments

[7590-01-P]

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 150, 170 and 171

RIN: 3150-AG73

Revision of Fee Schedules; Fee Recovery for FY 2001

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending the licensing, inspection, and annual fees charged to its applicants and licensees. The amendments are necessary to implement the Omnibus Budget Reconciliation Act of 1990 (OBRA-90), as amended, which requires that the NRC recover approximately 98 percent of its budget authority in fiscal year (FY) 2001, less the amounts appropriated from the Nuclear Waste Fund (NWF) and the General Fund. The amount to be recovered for FY 2001 is approximately $453.3 million.

EFFECTIVE DATE: (Insert 60 days after publication in the Federal Register).

ADDRESSES: The comments received and the agency work papers that support these final changes to 10 CFR Parts 170 and 171 are available electronically at the NRC's Public Electronic

B. Specific Part 170 Issues.

A. Hourly Rates.

Comment. Some commenters opposed the $144 proposed hourly rate for the materials program. As in similar comments received from the uranium recovery industry on the issue in previous fee schedule rulemakings, the commenters stated that the hourly rate is excessive, is more than the professional hourly rates charged by national consulting firms, and should be substantially reduced.

Response. The NRC's hourly rates are based on budgeted costs and must be established at the revised levels to meet the fee recovery requirements. The professional FTE rates include not only average salaries and benefits for professional employees, but also a prorated share of overhead costs, such as supervisory and secretarial support and information technology overhead costs, as well as general and administrative costs, such as rent, heat, supplies, and payroll and human resources staffs.

The proposed hourly rate of $144 for the materials program is a very slight increase over the $143 hourly rate for FY 2000. As stated in the proposed rule, the increase is primarily due to the Government-wide pay increase in FY 2001. The revised hourly rates, coupled with the direct contract costs, recover through Part 170 fees the full cost to the NRC of providing special services to specifically identifiable beneficiaries as provided by the IOAA, and the revised hourly rates plus direct contract costs recover through Part 171 annual fees the required amount of NRC's budgeted costs for activities not recovered through Part 170 fees, as required by OBRA-

TABLE I - Budget and Fee Recovery Amounts for FY 2001

[Dollars in Millions]

Total Budget Authority	$487.3
Less NWF	- 21.6
Less General Fund	- 3.2
Balance	$462.5
Fee Recovery Rate for FY 2001	x 98.0%
Total Amount to be Recovered For FY 2001	$453.3
Less Carryover from FY 2000	- 3.1
Amount to be Recovered Through Fees and Other Receipts	$450.2
Less Estimated Part 170 Fees and Other Receipts	-118.2
Part 171 Fee Collections Required	$332.0
Part 171 Billing Adjustments	
Unpaid FY 2001 Invoices (estimated)	3.2
Less Payments Received in FY 2001 for Prior Year Invoices (estimated)	- 3.6
Subtotal	- 0.4
Adjusted Part 171 Collections Required	$331.6

The final FY 2001 fee rule is a "major" final action as defined by the Small Business Regulatory Enforcement Fairness Act of 1996. Therefore, the NRC's fees for FY 2001 will become effective 60 days after publication of the final rule in the Federal Register. The NRC will send an invoice for the amount of the annual fee to reactors and major fuel cycle facilities upon publication of the FY 2001 final rule. For these licensees, payment will be due on the effective

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Part 171 Fee Collections Required	$332.0
Part 171 Billing Adjustments	
Unpaid FY 2001 Invoices (estimated)	3.2
Less Payments Received in FY 2001 for Prior Year Invoices (estimated)	- 3.6
Subtotal	- 0.4
Adjusted Part 171 Collections Required	$331.6

The final FY 2001 fee rule is a "major" final action as defined by the Small Business Regulatory Enforcement Fairness Act of 1996. Therefore, the NRC's fees for FY 2001 will become effective 60 days after publication of the final rule in the Federal Register. The NRC will send an invoice for the amount of the annual fee to reactors and major fuel cycle facilities upon publication of the FY 2001 final rule. For these licensees, payment will be due on the effective date of the FY 2001 rule. Those materials licensees whose license anniversary date during FY 2001 falls before the effective date of the final FY 2001 rule will be billed for the annual fee during the anniversary month of the license at the FY 2000 annual fee rate. Those materials licensees whose license anniversary date falls on or after the effective date of the final FY 2001 rule will be billed for the annual fee at the FY 2001 annual fee rate during the anniversary month of the license, and payment will be due on the date of the invoice.

registration fee will be required for each annual re-registration of the devices and for all new registrations of devices acquired after the registration program is fully implemented.

Because this is a "flat" fee based on average cost, it will be reviewed biennially as required by the CFO Act. The registration fee established in this FY 2001 final fee rule will not change until the next biennial review of fees in FY 2003.

5. Fee Waivers

To clarify the intent of the fee waiver provision for certain reports filed with the NRC for review and approval, the NRC is modifying the current criterion 3. of Footnote 4 to §170.21 and criterion (c) of Footnote 5 to §170.31 to specifically state that the review and approval of the reports must support NRC's generic regulatory improvements or efforts. In addition, criteria 1., 2., and 3. of Footnote 4 to §170.21 have been redesignated as criteria (a), (b), and (c).

Recently ~~In the recent past~~, several requests for Part 170 fee exemptions have been filed by licensees and various organizations who submit topical reports or other documents to the NRC for review. Part 170 currently provides that fees will not be assessed for requests or reports submitted to the NRC in response to an NRC inquiry to resolve an identified safety, safeguards, or environmental issue; or to assist the NRC in developing a rule, regulatory guide, policy statement, generic letter or bulletin; or as a means of exchanging information between industry organizations and the NRC for the purpose of supporting generic regulatory improvements or efforts. Many of the fee exemption requests have been denied because the submittals have not met the intent of the waiver provision. For example, several fee waiver requests were based on

Applying these factors to the safety, safeguards, and surcharge components of the $17.6 million total annual fee amount for the fuel facility class results in the annual fees for each licensee within the subcategories of this class summarized in the table below.

TABLE VII - Annual Fees for Fuel Facilities

Facility type	FY 2001 Annual Fee
High Enriched Uranium Fuel	$3,545,000
Uranium Enrichment	2,206,000
Low Enriched Uranium	1,146,000
UF_6 Conversion	509,000
Limited Operations Facility	467,000
Others	340,000

b. Uranium Recovery Facilities

The FY 2001 budgeted cost, including surcharge costs, to be recovered through annual fees assessed to the uranium recovery class is approximately $1.5 million. Of this amount, $654,000 will be assessed to DOE to recover the costs associated with DOE sites under the Uranium Mill Tailings Radiation Control Act of 1978 (UMTRCA). The remaining $864,000 will be recovered through annual fees assessed to conventional mills, solution mining uranium mills, and mill tailings disposal facilities. The costs are allocated to the individual uranium recovery

licensees in these categories based on the uranium recovery matrix established in the FY 1999 final fee rule (64 FR 31448; June 10, 1999).

The methodology for establishing Part 171 annual fees for uranium recovery licensees has not changed and is as follows:

(1) The methodology identifies three categories of licensees: conventional uranium mills (Class I facilities), solution mining uranium mills (Class II facilities), and mill tailings disposal facilities (11e(2) disposal facilities). Each of these categories benefits from the generic uranium recovery program efforts (e.g., rulemakings, staff guidance documents, etc.);

(2) The matrix relates the category and the level of benefit by program element and subelement;

(3) The two major program elements of the generic uranium recovery program are activities related to facility operations and those related to facility closure;

(4) Each of the major program elements was further divided into three subelements;

(5) The three major subelements of generic activities associated with uranium facility operations are regulatory efforts related to the operation of mills, handling and disposal of waste, and prevention of groundwater contamination. The three major subelements of generic activities associated with uranium facility closure are regulatory efforts related to decommissioning of facilities and land clean-up, reclamation and closure of tailings impoundments, and groundwater

clean-up. Weighted values were assigned to each program element and subelement considering health and safety implications and the associated effort to regulate these activities. The applicability of the generic program in each subelement to each uranium recovery category was qualitatively estimated as either significant, some, minor, or none.

The relative weighted factors per facility type for the various subclasses of uranium recovery licensees are as follows.

TABLE VIII - Weighted Factors for Uranium Recovery Licenses

		Level of Benefit		
	Number of	Category	Total Weight	
Facility Type	Facilities	Weight	Value	Percent
Class I (conventional mills)	3	770	2310	33
Class II (in-situ mills)	6.5[1]	645	4193	59
11e(2) disposal	1	475	475	7
11e(2) disposal incident to existing tailings sites	1	75	75	1

[1]The FY 2001 annual fee will be prorated 50 percent for Cogema Mining's License SUA-1341 based on its November 10, 2000, request that the license be amended for possession only.

Applying these factors to the $864,000 in budgeted costs to be recovered results in the following annual fees:

TABLE IX - Annual Fees for Uranium Recovery Licenses

A.(1) Licenses for possession and use of U-235 or plutonium for fuel fabrication activities.

(a) Strategic Special Nuclear Material:

Babcock & Wilcox

SNM-42..... $3,545,000

Nuclear Fuel Services

SNM-124..... $3,545,000

(b) Low Enriched Uranium in Dispersible Form Used for Fabrication of Power Reactor Fuel:

Westinghouse Electric Company LLC ✓

SNM-33.....$1,146,000 ✓

~~General Electric Company~~ Global Nuclear Fuel - Americas LLC

SNM-1097 .....$1,146,000 ✓

~~Siemens Nuclear Power~~ Framatome ANP Richland, Inc.

SNM-1227.....$1,146,000

Westinghouse Electric Company

SNM-1107.....$1,146,000

(2) All other special nuclear materials

* * * * *

(b) Annual fees in the amount of $100,000 or more and described in the Federal Register document issued under §171.13, and annual fees for Class I and Class II uranium recovery licensees must be paid in quarterly installments of 25 percent as billed by the NRC. The quarters begin on October 1, January 1, April 1, and July 1 of each fiscal year. The NRC will adjust the fourth quarterly invoice to recover the full amount of the revised annual fee. If the amounts collected in the first three quarters exceed the amount of the revised annual fee, the overpayment will be refunded. Licensees whose annual fee for the previous fiscal year was less than $100,000 (billed on the anniversary date of the license), and whose revised annual fee for the current fiscal year is $100,000 or greater (subject to quarterly billing), will be issued a bill upon publication of the final rule for the full amount of the revised annual fee for the current fiscal year, less any payments received for the current fiscal year based on the anniversary date billing process.

* * * * *

(d) Annual fees of less than $100,000 must be paid as billed by the NRC. Materials license annual fees that are less than $100,000, except those for Class I and Class II uranium recovery licensees, are billed on the anniversary date of the license. The materials licensees that are billed on the anniversary date of the license are those covered by fee categories 1C, 1D, 2A(2) Other Facilities, 2A(3), 2A(4), 2B, 2C, 3A through 3P, 4B through 9D, 10A, and 10B.

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that are billed on the anniversary date of the license are those covered by fee categories 1C, 1D, 2A(2) Other Facilities, 2A(3), 2A(4), 2B, 2C, 3A through 3P, 4B through 9D, 10A, and 10B.

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Dated at Rockville, Maryland, this _____ day of_____ , 2001.

For the Nuclear Regulatory Commission.

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Jesse L. Funches,
Chief Financial Officer.